

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LEVINE HAT CO., on behalf of itself and all other similarly situated,)	
)	
)	
Plaintiff,)	
)	
v.)	No. 4:16-cv-01132 SNLJ
)	
INNATE INTELLIGENCE, LLC, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

Plaintiff filed this action on July 13, 2016 against several defendants and alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). In particular, plaintiff alleges that defendants sent advertisement by facsimile to numbers without prior permission and that the facsimiles in question did not contain an appropriate opt-out notice. This Court certified a class on February 9, 2018 and then entered a Phase II CMO on March 16, 2018.

Currently before the Court is the parties’ motion to approve settlement [#169]. This Court held a phone conference to discuss the proposed settlement and informed the parties that the amount to be paid to plaintiffs under the proposal—\$5.00 per class member—was not a sufficient settlement in light of the \$500-per-violation statutory damages otherwise available. The parties attempted to renegotiate the terms of the settlement, and the Court held repeated phone conferences with counsel.

The parties have filed a status report. Defendant Profax's "financial condition...has worsened," and as a result it is "not in a position to engage in further settlement discussions." [#183 at 2.] "Profax cannot at this time predict whether or when its present circumstances will improve." [*Id.*] It thus appears the parties are at an impasse. This Court cannot stay this matter indefinitely, and it appears that it is time to move on with the litigation.

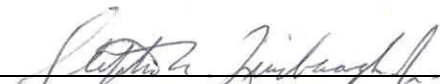
Thus, the motion to approve settlement will be denied, and the parties will be ordered to submit a proposed Amended Case Management Order.

Accordingly,

IT IS HEREBY ORDERED that the parties' Motion for Preliminary Approval of Class Action Settlement is DENIED.

IT IS FURTHER+ ORDERED that the parties shall submit a joint proposed Amended Case Management Order no later than August 25, 2020.

Dated this 5th day of August, 2020.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE